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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

CECELIA OLIVAS,	)	Case No. SACV 08-01085-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the Social	)	
Security,	)	
	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Cecelia Olivas seeks judicial review of the Social Security Commissioner's denial of her application for Supplemental Security Income ("SSI") benefits under the Social Security Act. For the reasons stated below, the Commissioner's decision is **AFFIRMED**.

**I. Facts and Procedural History**

Plaintiff was born on July 3, 1964, and has a ninth grade education. (Administrative Record ("AR") 104, 106.) Plaintiff's work history includes positions as a cashier, customer service representative, and machine shop worker; she has not been gainfully employed since 2000 or 2001. (AR 23, 100.)

1 Plaintiff has filed two applications for SSI benefits, the first on  
2 September 20, 2002, and the second on January 31, 2006. In each  
3 application, Plaintiff asserted that she is disabled due to depression,  
4 back and neck pain, and tingling, pain, and numbness in her hands, arms,  
5 and legs. (AR 24-33.) After the Commissioner denied Plaintiff's first  
6 application initially and upon reconsideration, Plaintiff timely  
7 requested a hearing. Administrative Law Judge Richard A. Urbin held a  
8 hearing on August 4, 2005, at which Plaintiff testified and was  
9 represented by counsel. (AR 42.) A vocational expert also testified. (AR  
10 49.)

11 The ALJ denied Plaintiff's first application on August 26, 2005,  
12 concluding that Plaintiff was not disabled under the Social Security  
13 Act. The ALJ applied the five-step sequential analysis mandated by the  
14 Social Security Regulations<sup>1</sup> in reaching his decision. The ALJ found that  
15 Plaintiff had not engaged in substantial gainful activity at least from  
16 the date she filed her application, and that her severe impairments  
17 included obesity and spondylolisthesis of the lumbosacral spine. (AR  
18 43.) The ALJ determined that Plaintiff's depression was not severe, nor  
19 was her wrist impairment, which Plaintiff testified had significantly  
20 improved. (*Id.*) After determining that Plaintiff's impairments did not  
21 meet or equal the listed impairments in 20 C.F.R. § 404, Subpart P,  
22 Appendix 1, the ALJ concluded that Plaintiff retained the residual  
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24 <sup>1</sup> The five steps are as follows: (1) whether the claimant is  
25 engaged in substantial gainful activity; (2) whether the claimant's  
26 impairment is "severe"; (3) whether the impairment meets or equals one  
27 of the listings in 20 C.F.R. § 404, Subpart P, Appendix 1; (4) whether  
28 the claimant is able to return to past relevant work; and (5) whether  
the claimant can do other types of work. 20 C.F.R. § 404.1520(a)(4).  
These steps are cumulative, meaning that the ALJ need not consider  
further steps after finding that a step does not favor the claimant.

1 functional capacity ("RFC")<sup>2</sup> to lift or carry twenty pounds occasionally  
2 and ten pounds frequently, stand or walk for two hours and sit for six  
3 hours out of an eight-hour day, and occasionally climb, balance, kneel,  
4 crouch, crawl, and stoop. (AR 47.) Relying on the vocational expert's  
5 testimony, the ALJ found that Plaintiff could not return to her past  
6 relevant work, but that jobs existed in significant numbers in the  
7 national economy that Plaintiff is able to perform, such as ink printer,  
8 buckle-wire inserter, and touch up screener. (AR 49.) On January 30,  
9 2006, the Social Security Appeals Council denied Plaintiff's request for  
10 review. (AR 9.) Plaintiff did not pursue further appeals on this  
11 application.

12 Plaintiff filed her second application for SSI benefits on January  
13 31, 2006, which the Commissioner denied initially and on  
14 reconsideration. (Joint Stip. 2.) Plaintiff appeared for a second  
15 hearing on October 2, 2007, before ALJ Charles E. Stevenson, at which  
16 Plaintiff testified and was represented by counsel. (AR 9.) In a  
17 decision issued on October 17, 2007, the ALJ first stated that  
18 Plaintiff's second application was based on the same impairments as the  
19 first application. (AR 9.) Because those impairments had been found to  
20 be nondisabling, the ALJ noted that Plaintiff bore the burden of proving  
21 "changed circumstances" sufficient to overcome the presumption of  
22 nondisability under *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988). (AR  
23 14-15.) The ALJ concluded that Plaintiff failed to meet her burden and  
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26 <sup>2</sup> A claimant's RFC is what he or she is capable of doing despite  
27 physical and mental limitations. 20 C.F.R. § 404.1545(a)(1); *Cooper v.*  
28 *Sullivan*, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989). "RFC is an assessment  
of an individual's ability to do sustained work-related physical and  
mental activities in a work setting on a regular and continuing basis."  
SSR 96-8p, 1996 WL 374184, at \*1 (S.S.A. July 2, 1996).

1 adopted the prior ALJ's decision denying her claim.

2 The Appeals Council denied Plaintiff's request for review on August  
3 6, 2008. (AR 1.) Plaintiff filed this action on September 25, 2008,  
4 challenging the denial of her second application. Plaintiff contended  
5 that the ALJ erred by (1) failing to properly consider the examining  
6 physician's opinion; (2) incorrectly concluding that Plaintiff could  
7 perform work as an ink printer, buckle-wire inserter, or touch up  
8 screener; and (3) failing to properly consider Plaintiff's obesity in  
9 reaching the disability determination. (Joint Stip. 2-3.) This matter is  
10 ready for decision.

## 11 12 **II. Standard of Review**

13 The Court must uphold the Social Security Administrations's  
14 disability determination unless it is not supported by substantial  
15 evidence or is based on legal error. *Ryan v. Comm'r of Soc. Sec.*, 528  
16 F.3d 1194, 1198 (9th Cir. 2008)(citing *Stout v. Comm'r of Soc. Sec.*  
17 *Admin.*, 454 F.3d 1050, 1052 (9th Cir. 2006)). Substantial evidence means  
18 more than a scintilla, but less than a preponderance; it is evidence  
19 that a reasonable person might accept as adequate to support a  
20 conclusion. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir.  
21 2007)(citing *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir.  
22 2006)). To determine whether substantial evidence supports a finding,  
23 the reviewing court "must review the administrative record as a whole,  
24 weighing both the evidence that supports and the evidence that detracts  
25 from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715,  
26 720 (9th Cir. 1996). "If the evidence can support either affirming or  
27 reversing the ALJ's conclusion," the reviewing court "may not substitute  
28 [its] judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

### 1 III. Discussion

2 When a claimant's application for SSI benefits is denied and the  
3 claimant does not appeal, the decision denying benefits becomes binding  
4 on all parties and creates a presumption of continuing nondisability.  
5 *Taylor v. Heckler*, 765 F.2d 872, 875 (9th Cir. 1985). In a subsequent  
6 application for SSI based on the same disability, the claimant bears the  
7 burden of showing "'changed circumstances' indicating a greater  
8 disability." *Chavez*, 844 F.2d at 693 (quoting *Taylor*, 765 F.2d at 875).  
9 If the claimant fails to meet this burden, the ALJ may rely on the prior  
10 decision in denying the later claim. *Lyle v. Sec'y of Health & Human*  
11 *Servs.*, 700 F.2d 566, 568 (9th Cir. 1983). With these principles in  
12 mind, the Court will turn to Plaintiff's assignments of error.

#### 13 A. The ALJ Properly Considered the Examining Physician's Opinion

14 Plaintiff argues that, in ascertaining her RFC, the ALJ failed to  
15 account for the opinion of the orthopedic examining physician, John  
16 Chung, M.D. (Joint Stip. 3-5.) After examining Plaintiff, Dr. Chung  
17 noted in his report that Plaintiff might have carpal tunnel syndrome,  
18 but that such a diagnosis would need to be confirmed with nerve  
19 conduction studies. (AR 181.) He stated that "[t]he only objective  
20 finding at the present time is that ... she has spondylolisthesis at a  
21 level of L4 to L5." (*Id.*) Dr. Chung further stated that Plaintiff "might  
22 have difficulty using her hand[s] doing fine and gross manipulation for  
23 an extended period of time such as over [a] 1/2 an hour and 45 minutes"  
24 and that she "might do occasional activity requiring agility<sup>3</sup>." (*Id.*) Dr.

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27 <sup>3</sup> Plaintiff apparently assumes that in using the word "agility,"  
28 Dr. Chung meant "manual dexterity." It is not clear from the report  
whether Plaintiff's interpretation is correct, but either way it has no  
bearing on the case's outcome.

1 Chung also indicated that Plaintiff's subjective complaints were greater  
2 than the objective findings would indicate. (AR 14.)

3 In discussing Dr. Chung's opinion, the ALJ acknowledged Dr. Chung's  
4 statement that Plaintiff could have carpal tunnel syndrome, but he did  
5 not mention the possible limitations associated with that syndrome that  
6 Dr. Chung identified, nor did he incorporate them into the RFC  
7 determination. Plaintiff contends that this omission was error, arguing  
8 that the ALJ was required to provide specific and legitimate reasons for  
9 rejecting Dr. Chung's opinion. (Joint Stip. 4.) Plaintiff does not  
10 mention her burden to show changed circumstances from her previous SSI  
11 application, and she offers no discussion of how her condition worsened  
12 from the prior application, even though the ALJ specifically concluded  
13 that Plaintiff had failed to meet her burden. The Court must determine  
14 whether the ALJ's decision was supported by substantial evidence in the  
15 record, in light of both the first and second ALJs' decisions.

16 In his decision on Plaintiff's first application, the prior ALJ  
17 mentioned the possibility that Plaintiff had carpal tunnel syndrome,  
18 based on a note in the medical record. (AR 43.) The ALJ did not give the  
19 matter further consideration, however, because Plaintiff apparently  
20 testified at the first hearing that her wrist problems had been  
21 resolved, which an examining orthopedist confirmed. (AR 43.) Now,  
22 however, Plaintiff asserts that she has significant tingling, numbness,  
23 pain, and loss of strength in her arms and hands, which she claims  
24 interferes with her ability to use her hands. (AR 28-30.)

25 In evaluating Plaintiff's claimed impairments, the second ALJ  
26 stated that "the claimant has offered little objective evidence of a  
27 change in circumstances or a worsening of her condition." (AR 13.) The  
28 ALJ then summarized the medical records Plaintiff provided to support

1 her claim, all of which focused on Plaintiff's complaints of back pain.  
2 (AR 13-14.) The ALJ stated, "The claimant presented no other significant  
3 objective medical evidence of a change in circumstances or a worsening  
4 of her condition. Nonetheless, she maintains she is unable to work due  
5 to her alleged subjective symptoms." (AR 14.) The ALJ found Plaintiff to  
6 be "not fully credible regarding the extent, intensity and duration of  
7 the alleged subjective symptoms and functional limitations and  
8 restrictions" (*id.*), a finding that Plaintiff does not challenge. The  
9 ALJ concluded that Plaintiff had not met her burden to rebut the  
10 presumption of continuing nondisability.

11 Nothing in the record supports Plaintiff's claims of debilitating  
12 symptoms in her hands and wrists. Dr. Chung's notation that she *might*  
13 have difficulty using her hands and that further testing needed to be  
14 done to determine whether she even had carpal tunnel is insufficient to  
15 establish changed circumstances. Plaintiff's argument that "Dr. Chung  
16 has determined that the Plaintiff does indeed have significant  
17 limitations that may bear an impact on the Plaintiff's ability to work"  
18 is an inaccurate characterization of the record. (See Joint Stip. 5.)  
19 The Court agrees with Defendant's contention that Dr. Chung's equivocal  
20 statement regarding Plaintiff's possible limitations is not significant  
21 probative evidence requiring explicit acceptance or rejection by the  
22 ALJ, particularly in light of the absence of other evidence supporting  
23 such limitations. (See Joint Stip. 7.)

24 The Court concludes that the ALJ properly considered the examining  
25 physician's opinion, and the decision is supported by substantial  
26 evidence in the record. The ALJ's decision to adopt the prior denial of  
27 Plaintiff's first application for SSI benefits was appropriate.  
28 Plaintiff is not entitled to relief on this claim.

1           **B.     The ALJ Appropriately Concluded that Plaintiff Could Perform**  
2                   **the Jobs of Ink Printer, Buckle-Wire Inserter, and Touch Up**  
3                   **Screeners**

4           Plaintiff argues that, in light of Dr. Chung's statement as to her  
5 possible manual limitations, the ALJ incorrectly determined that  
6 Plaintiff was capable of performing work as an ink printer, buckle-wire  
7 inserter, or touch up screener, all of which require constant, frequent,  
8 or occasional handling and fingering. (Joint Stip. 8.) The Court has  
9 already concluded that the ALJ's consideration of Dr. Chung's statement  
10 was proper. Accordingly, the ALJ was not required to incorporate the  
11 statement into the RFC determination. Plaintiff is not entitled to  
12 relief on this claim.

13           **C.     Plaintiff Failed to Demonstrate Changed Circumstances as to**  
14                   **Her Obesity**

15           Plaintiff argues that the ALJ improperly failed to consider the  
16 impact of Plaintiff's obesity on her functional limitations. (Joint  
17 Stip. 10-12.) As with her other claims, Plaintiff does not address her  
18 burden to establish changed circumstances; she simply argues that  
19 obesity is a required consideration when evaluating a claimant's  
20 disability.

21           Although Plaintiff is correct that a claimant's obesity does have  
22 an impact on disability determinations, she entirely fails to offer any  
23 evidence or argument that her condition has worsened or changed in any  
24 way since the denial of her first application. The first ALJ clearly  
25 considered Plaintiff's obesity, finding it to be a severe impairment,  
26 and still concluded that Plaintiff was not disabled. Unless Plaintiff  
27 can show that something relevant has changed, she is not entitled to  
28 have the second ALJ, or this Court, reconsider whether her obesity



1 rendered her disabled. Plaintiff's failure to make such a showing  
2 precludes this claim.

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4 **IV. Conclusion**

5 For the reasons stated above, the Commissioner's decision denying  
6 Plaintiff's application for SSI benefits is **AFFIRMED**.

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8 DATED: July 16, 2009



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MARC L. GOLDMAN  
United States Magistrate Judge  
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